



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1996

Mr. Harold Willard
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR96-2302

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37297.

The Lubbock Police Department (the "department") received an open records request for "the entire case file" pertaining to a particular case of aggravated assault. In your original submission to this office requesting an open records decision, you argued that the entire case file at issue was confidential under former section 51.14(d) of the Family Code because you believed that all of the criminal defendants in the case were juveniles. In subsequent correspondence to this office, you informed us that in fact only one out of eight of the suspects was a juvenile at the time of the assault; you then sought to withhold the requested information pursuant to the "law enforcement exception," section 552.108 of the Government Code.

We initially note that in the recent legislative session, the 74th Legislature repealed section 51.14 of the Family Code and substantially revised it as part of chapter 58 of the code, effective January 1, 1996. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 53, 100, 105, 106, 1995 Tex. Sess. Law Serv. 2517, 2549-53, 2590-91 (Vernon). Prior to its repeal, section 51.14(d) provided as follows:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;

- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

However, despite the repeal of section 51.14(d), law-enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential under that section. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2591 (Vernon). Because a juvenile is identified in the records at issue, and because the juvenile conduct occurred prior to January 1, 1996, we conclude that all information revealing the identity of the juvenile is confidential and therefore must be withheld from the public pursuant to former section 51.14(d) of the Family Code in conjunction with section 552.101 of the Government Code.¹ *See* Open Records Decision No. 394 (1983) (where police records contain information about both adult and juvenile offenders, juvenile information must be redacted).

As noted above, you also contend that the remaining information may be withheld from the public pursuant to the "law-enforcement exception," section 552.108 of the Government Code. We note, however, that you have raised this exception only after the tenth day following the department's receipt of the open records request. Section 552.301(a) of the Government Code specifically provides:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision *and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.* [Emphasis added.]

Additionally, section 552.302 of the Government Code provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information." Because you did not raise section 552.108 in a timely manner, this exception is presumed to be waived. This presumption can be overcome only by a demonstration that compelling reasons exist for withhold the information. Open Records Decision No. 515 (1988) at 6. You have made no such demonstration with regard to section 552.108. We therefore deem this

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

exception as being waived. Accordingly, except for the information pertaining to the juvenile suspect, the department must release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with the first name "Sam" being more prominent than the last name "Haddad".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/ch

Ref.: ID# 37297

Enclosures: Submitted documents

cc: Mr. Robert Teel
Bob Huff and Associates
P.O. Box 506
Lubbock, Texas 79408
(w/o enclosures)